

No. 200,674-4

SANDERS, J. (dissenting)—Stephen D. Cramer made mistakes, including violations of the law, but the facts belie that he acted intentionally with dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflected upon his fitness to practice law. *See* ABA Standards for Imposing Lawyer Sanctions std. 5.11(b) (1992). Because I would suspend Cramer’s law license instead of disbaring him, I dissent.

The majority casts Cramer in too sinister a light. It makes great hay out of his failure to inform the Department of Revenue (DOR) of his intention to reincorporate as a different legal entity. Majority at 13. In its zeal, however, the majority effectively creates a new duty that does not exist in our disciplinary jurisprudence. In the eyes of the majority, Cramer sinned by failing to disclose his intention to continue practicing law as a PS (professional services corporation), when he terminated his PLLC (limited liability company). But there is no lie in Cramer’s act, not even one of omission. His letter properly informed the government of his intention to

terminate the PLLC.¹ The majority improperly infers deceitful motive from Cramer's letter without citing any legal authority to support this new legal duty of comprehensive disclosure. Majority at 15-17. Cramer's letter was accurate and truthful; it was not dishonest.

In reality Cramer admitted to incorporating under a new legal entity in his testimony before the disciplinary board and in his interactions with DOR agents. He did not try to conceal his actions. When Cramer learned he was in violation of state law by failing to register with DOR, he submitted a master application for his PS on January 8, 2007. These acts do not support the hearing examiner's legal conclusion that "[b]y intentionally attempting to circumvent the Department of Revenue's Final Revocation Order by changing the name of the business under which he practiced law and continuing to practice without a certificate of registration, Respondent acted dishonestly and deceitfully, in violation of RPC 8.4(c)." Clerk's Papers (CP) at 487-88 (*Amended Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation (AFFCL)*) at 17-18.²

¹ Cramer's letter to DOR, dated September 22, 2006, reads: "NOTICE IS HEREBY GIVEN that Stephen D. Cramer, PLLC will cease doing business and terminate all further business operations on **September 30, 2006**. The limited liability company will then be dissolved through the Washington Secretary of State as soon as possible after that date." Ex. 8C.

² We review conclusions of law de novo. *In re Disciplinary Proceeding Against*

As a direct result of the PLLC's termination, Cramer removed the final revocation notice notifying the public of his failure to pay taxes. The notice provided that it be posted at the "main entrance to the taxpayer's place of business" CP at 481 (AFFCL at 11 (quoting Final Revocation Order)). However, the notice Cramer removed referenced a terminated legal entity. Stephen D. Cramer PLLC did not exist as a place of business. "Cramer removed the posted Order because Stephen D. Cramer LLC had ceased operations and was no longer conducting business at that location." Pet'r's Br. at 12. By removing the notice, Cramer did not believe he was doing anything wrong, and he certainly did not act with dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflected upon his fitness to practice.

Cramer "does not dispute" he broke the law by operating without a license between October 2006 and January 2007. Pet'r's Br. at 14-15; *see* RCW 82.32.290.³ Our rules of professional conduct provide that a lawyer commits professional misconduct by committing any "act which reflects

Guarnero, 152 Wn.2d 51, 59, 93 P.3d 166 (2004).

³ "It shall be unlawful . . . [f]or any person to engage in business without having obtained a certificate of registration . . . ," RCW 82.32.290(1)(a)(i), or "[f]or any person to tear down or remove any order or notice posted by the department. . . ," *id.* at (1)(a)(iii), or "[f]or any person to engage in business after revocation of a certificate of registration. . . ," *id.* at (2)(a)(i).

disregard for the rule of law,” RPC 8.4(i), or by committing “a criminal act that reflects adversely on the lawyer’s . . . fitness as a lawyer in other respects.” RPC 8.4(b). Cramer breached these rules by operating without a license. For that reason he should suffer a suspension at most.⁴ See *In re Disciplinary Proceeding Against Curran*, 115 Wn.2d 747, 771-72, 801 P.2d 962 (1990) (explaining that “the *ABA Standards* do not include a specific *Standard* aimed at conduct reflecting disregard for the rule of law” but finding the presumptive sanction for disregard for the rule of law should be reprimand or censure);⁵ see also *In re Disciplinary Proceeding Against Day*, 162 Wn.2d 527, 531, 173 P.3d 915 (2007) (holding that presumptive sanction for nondishonest violation of RPC 8.4(b) is suspension). Disbarment is too severe. “We have historically reserved disbarment for grievous acts of ethical misconduct.” *In re Disciplinary Proceeding Against Eugster*, 166 Wn.2d 293, 324, 209 P.3d 435 (2009).

We give greater weight to a hearing board’s unanimous recommendation than a split decision. *In re Disciplinary Proceeding Against*

⁴ ABA Standards std. 5.12 provides: “Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer’s fitness to practice.”

⁵ *In re Disciplinary Proceeding Against Curran* addressed RLD 1.1(a), which was recodified in 2002 as RPC 8.4(i). See *In re Disciplinary Proceeding Against Day*, 162 Wn.2d 527, 544 n.11, 173 P.3d 915 (2007).

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Trejo, 163 Wn.2d 701, 734, 185 P.3d 1160 (2008). Here the vote was nine to three, with the three dissenting votes calling for suspension. This lack of unanimity at the very least casts doubt on the majority's excessive sanction.

Cramer made some mistakes. However, those mistakes do not warrant our harshest sanction. Cramer did not intentionally act with dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflected upon his fitness to practice law. *See* ABA Standards std. 5.11(b). Suspension is the appropriate sanction for Cramer's misdeeds.

I dissent.

AUTHOR:

Justice Richard B. Sanders

WE CONCUR:
